82-77

No.

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In the Supreme Court of the United States

October Term, 1982

WILLIAM N. GRIFFIN, B & B BEVERAGE CO., CLASSIC CITY BEVERAGES, INC., GEORGIA CROWN DISTRIBUTING CO., NORTHEAST SALES DISTRIBUTING, INC., PREMIUM DISTRIBUTING CO., INC., GEORGIA BEER WHOLESALERS ASSOCIATION, INC., TOWN OF BALDWIN, GEORGIA, and TOWN OF MOUNT AIRY, GEORGIA, *Appellants*,

vs.

BURNES E. SIMS, JAMES HOLCOMB, CHARLES ENGLISH, FRED HOLBROOKS, MARTHA SIKES, Individually and as Members of the BOARD OF EDUCATION OF HABERSHAM COUNTY, GEORGIA, and THE BOARD OF EDUCATION OF HABERSHAM, COUNTY, GEORGIA, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED BY THE APPEAL

1. Whether the decision of the Supreme Court of Georgia that a territorial classification does not require a rational basis violates the equal protection guarantee of the Fourteenth Amendment?

2. Whether equal protection under the Fourteenth Amendment is denied by an amendment to the Georgia Constitution which creates a territorial classification which has been determined to have no rational basis in fact?

3. Whether the classification of one county in a State separate and apart from all other counties in that State must have a rational basis in order not to violate the equal protection clause of the Fourteenth Amendment?

4. Whether equal protection of the law is violated by an amendment to the Georgia Constitution which taxes only citizens of certain municipal corporations within a County while allowing residents of the County outside those municipalities to receive benefits but not pay the same tax?

PARTIES

There are two separate cases involved in this Appeal from a single decision of the Supreme Court of Georgia.[1] Because of the identity of issues between the two cases, a single Jurisdictional Statement is being filed pursuant to Rule 10.6 of this Court.

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1. *Sims et al. v. Griffin et al.*, Case No. 38360, dec. April 21, 1982; *Sims et al. v. Town of Baldwin et al.*, Case No. 38359, dec. April 21, 1982.

The first case appealed is that which was styled *Sims et al. v. Griffin et al.*, Case Number 38360, decided on April 21, 1982 by the Georgia Supreme Court. The caption of this case contains the names of all parties to that case in the Supreme Court of Georgia.

The second case appealed is that which was styled *Sims et al. v. Town of Baldwin et al.*, Case Number 38359, also decided on April 21, 1982 by the Georgia Supreme Court. There were several parties to that case who have not joined in bringing this Appeal.[2]

Except for B & B Beverage Co., none of the corporations which are parties hereto have any parent, subsidiary or affiliated companies other than wholly-owned subsidiaries.[3]

This proceeding draws into question the constitutionality of a provision of the Georgia Constitution of 1976, as amended. Neither the State of Georgia, nor any agency, officer or employee thereof is or has been a party to this proceeding at any stage of the litigation. Thus 28 U.S.C. §2403(b) may be applicable to this action, and a copy of this Jurisdictional Statement is being served upon the Honorable Michael Bowers, Attorney General of Georgia.

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2. Bobby Joe Caudell, Mrs. Nanna Elsner, J. D. Loudermilk, Thomas O. Loudermilk, and J. P. Keller have not appealed that decision.

3. Since the litigation began, ownership of Appellant B & B Beverage Co. has been purchased by Northeast Sales Distributing, Inc., another Appellant in the *Griffin* action.

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No.

In the Supreme Court of the United States

October Term, 1982

WILLIAM N. GRIFFIN, B & B BEVERAGE CO., CLASSIC CITY BEVERAGES, INC., GEORGIA CROWN DISTRIBUTING CO., NORTHEAST SALES DISTRIBUTING, INC., PREMIUM DISTRIBUTING CO., INC., GEORGIA BEER WHOLESALERS ASSOCIATION, INC., TOWN OF BALDWIN, GEORGIA, and TOWN OF MOUNT AIRY, GEORGIA, *Appellants*,

VS.

BURNES E. SIMS, JAMES HOLCOMB, CHARLES ENGLISH, FRED HOLBROOKS, MARTHA SIKES, Individually and as Members of the BOARD OF EDUCATION OF HABERSHAM COUNTY, GEORGIA, and THE BOARD OF EDUCATION OF HABERSHAM, COUNTY, GEORGIA, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

William N. Griffin, B & B Beverage Co., Classic City Beverages, Inc., Georgia Crown Distributing Co., Northeast Sales Distributing, Inc., Premium Distributing Co., Inc., Georgia Beer Wholesalers Association, Inc., Town of Baldwin, Georgia and Town of Mount Airy, Georgia (Appellants) respectfully request that this Court note jurisdiction of this Appeal from the Supreme Court of Georgia.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia, attached as Appendix A, is reported at 249 Ga. 293, 290 S.E.2d 433 (1982). The unreported Findings of Fact, Conclusions of Law, and Order of the Superior Court of Habersham County, Georgia, Mountain Judicial Circuit, which were entered on August 7, 1981, are attached to this Jurisdictional Statement as Appendix B. The unreported Judgment on Remittitur entered in the Superior Court of Habersham County on May 14, 1982 is attached hereto as Appendix C.

JURISDICTION

This Appeal is taken from a single decision of the Supreme Court of Georgia which was entered in two companion cases on April 21, 1982.[4] That decision reversed the Trial Court and upheld the constitutionality of Ga. Laws 1980, pp. 2280 *et seq.* against a challenge by Appellants.[5] The Notice of Appeal in *Sims et al. v. Griffin et al.* was timely filed on June 7, 1982 in the Supreme Court of Georgia and is attached hereto as Appendix D. The Notice of Appeal in *Sims et al. v. Town of Baldwin et al.* was timely filed on June 18, 1982 in the Supreme Court of Georgia, and is attached hereto as Appendix E. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2) (1976).

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4. 249 Ga. 293, 290 S.E.2d 433 (1982).

5. Appendix A at p. A1u.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Georgia Laws 1980, pp. 2280 *et seq.* are set forth in Appendix F.

The Fourteenth Amendment to the United States Constitution provides in relevant part as follows:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

(a) Parties

Appellant William N. Griffin is an individual resident of DeKalb County, Georgia.[6] Appellants B & B Beverage Co., Classic City Beverages, Inc., Georgia Crown Distributing Co., Northeast Sales Distributing, Inc., and Premium Distributing Co., Inc., are wholesalers of malt beverages licensed under Georgia law to sell malt beverages in Habersham County, Georgia.[7] Appellant Georgia Beer Wholesalers Association, Inc. is a Georgia not-for-profit corporation whose members are malt beverage wholesalers in Georgia.[8] Appellants Town of Baldwin and Town of Mount Airy are municipalities located within Habersham County,

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6. Appendix B at p. A15.
7. Appendix B at p. A16.
8. Appendix B at p. A17.

Georgia in which the sale of alcoholic beverages is authorized under Georgia law.[9]

The Appellees herein are members of The Board of Education of Habersham County, Georgia named in their individual capacities as well as jointly as the Board of Education. The Board of Education itself is also named as an Appellee in this Appeal.

(b) Georgia Constitutional Amendment Procedure

Under the Georgia Constitution of 1976 as amended, there exist two types of constitutional amendments.[10] The first is the "general" amendment which has effect throughout the State.[11] The second is the "local" amendment which has effect in a limited geographical area, usually within one or two political subdivisions.[12]

The ratification procedure for "local" amendments is different from that for "general" amendments.[13] General amendments must be ratified by the statewide electorate, while local amendments need only be ratified in the political subdivision directly affected by the proposed amendment.[14]

(c) The Proposed Constitutional Amendment: Georgia Laws 1980, pp. 2280 et seq.

At its 1980 session, the Georgia General Assembly passed a resolution which placed upon the General Election

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9. Appendix B at p. A15.

10. Article XII, Section I, Paragraph I (Ga. Code Ann. §2-6901).

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

ballot of Habersham County in November, 1980, a proposed local constitutional amendment (the "Proposed Amendment") which, if ratified, purportedly authorized the Board of Education of Habersham County to direct the Habersham County Commission to levy and collect excise taxes at varying rates on all alcoholic beverages sold within Habersham County, Georgia.[15] These taxes were to be levied in addition to all excise taxes already imposed on the sale of alcoholic beverages statewide,[16] and were to be levied in no other county in Georgia except Habersham County.[17]

The Proposed Amendment was submitted to the electorate of Habersham County, Georgia.[18] No voters in Georgia, other than those residing in Habersham County, were permitted to vote on the Proposed Amendment.[19]

At the November, 1980, General Election, the Proposed Amendment was ratified by the voters of Habersham County and purportedly became part of the Georgia Constitution.[20] On February 9, 1981, the Habersham County Board of Education met, and upon resolution, directed the County to levy and begin collecting the additional excise taxes.[21] On March 2, 1981, the Habersham County Commission met, and upon resolution, voted to impose the taxes effective April 1, 1981.[22]

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15. Appendix A at p. A1, Appendix B at p. A12, Appendix F at pp. A32-A35.

16. Appendix B at p. A12, A14.

17. Appendix B at p. A17.

18. Appendix B at p. A19.

19. Appendix B at p. A19.

20. Appendix A at p. A1, Appendix B at p. A19, Ga. Code Ann. §2-6901, Ga. Laws 1981, p. 2174.

21. Appendix A at p. A2, Appendix B at p. A13.

22. Appendix A at p. A2, Appendix B at p. A13.

(d) Allegations of Appellants' Complaints in the Superior Court of Habersham County, Georgia

Appellants originally brought two separate but similar actions in the Superior Court of Habersham County, Georgia against Appellees and others for a declaratory judgment and preliminary and permanent injunctive relief seeking, *inter alia*, to have Ga. Laws 1980 pp. 2280 *et seq.*, declared violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution, and to prevent the imposition and collection of the tax purportedly authorized by said Amendment.[23]

In their Complaints, Appellants alleged that the Proposed Amendment created a classification (purchasers and sellers of malt and other alcoholic beverages in Habersham County, Georgia) which had no rational basis.[24]

Because the territorial classification lacked any such basis, Appellants asked the Court to declare the Proposed Amendment and all resolutions enacted pursuant to it void and without effect because they were in violation of the Fourteenth Amendment.[25] Appellants alleged that they would suffer irreparable injury because of the equal protection violation.[26]

(e) Proceedings Below

In the Superior Court of Habersham County, the separate actions filed by Appellants were consolidated, and a

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23. Appendix A at p. A2, Griffin Complaint, *ad damnum* clause; Town of Baldwin Complaint, *ad damnum* clause.

24. Griffin Complaint ¶14, Town of Baldwin Complaint ¶23, 26.

25. Griffin Complaint, *ad damnum* clause, Town of Baldwin Complaint, *ad damnum* clause.

26. Griffin Complaint ¶15-22, Town of Baldwin Complaint ¶29.

plenary trial on the merits of the issue of the constitutionality of the Proposed Amendment and the subsequent resolutions was conducted.[27] After receiving evidence, the Superior Court of Habersham County, Gunter, J., presiding, agreed with Appellants that in fact the challenged territorial classification had no rational basis; thus the Proposed Amendment making the classification should be struck down as violating the equal protection clause of the Fourteenth Amendment.[28]

Judge Gunter's Findings of Fact, Conclusions of Law and Order point out at length the constitutional deficiencies in the Proposed Amendment.[29] Judge Gunter found as a matter of fact that the Proposed Amendment classifies sellers and purchasers of alcoholic beverages into two categories and thereby creates a territorial classification which differentiates between sellers and purchasers of alcoholic beverages in Habersham County and sellers and purchasers of alcoholic beverages in all other counties in the State.[30] The Court also found as a matter of fact that since the Proposed Amendment applies only to Habersham County, no other county or counties of this State can come within the class consisting of Habersham County alone, regardless of whether or not other such counties have the same needs or face the same problems which were supposedly dealt with by the Proposed Amendment.[31] The Trial Court further found as a matter of fact that "the Proposed Amendment would impose a burden upon those who sell and purchase alcoholic beverages in Habersham County which is not imposed on such purchasers and sellers in

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27. Appendix B, p. A12.

28. Appendix B, pp. A12-A26.

29. *Id.*

30. Appendix B, pp. A17-A18.

31. Appendix B, p. A18.

other counties; to purchasers, in the form of additional tax; to sellers in the form of increased administrative and operational costs and sales losses. This burden would apply nowhere else in this State (Georgia)".[32] Turning from the classification created by the Proposed Amendment, the Trial Court then analyzed the question of whether the classification was supported by a rational basis.

After a review of all possible justifications and bases for and in support of the classification, the Trial Court finally found, as a matter of fact:

> there is no factual support or factual basis for classifying purchasers and sellers of alcoholic beverages in Habersham County separate and apart from all other purchasers and sellers in this State.[33]

Applying the law of equal protection to these facts established by the Plaintiffs' evidence, the Court struck down the Proposed Amendment,[34] and permanently enjoined the collection of the excise taxes.[35]

Appellees in this Court filed a Notice of Appeal of the Superior Court's Order and pursued an Appeal to the Supreme Court of Georgia.[36]

In an Order dated April 21, 1982, the Supreme Court of Georgia reversed the order and judgment of the Trial Court by holding that Ga. Laws 1980, pp. 2280 *et seq.* did not violate the equal protection clause of the Fourteenth Amendment.[37]

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32. Appendix B, p. A18.
33. Appendix B, p. A18.
34. Appendix B, pp. A22-A23.
35. Appendix B, pp. A25-A26.
36. Appendix A, p. A2.
37. Appendix A, p. A5.

Appellees argued to that Court that sufficient basis existed to support the classification.[38] Without reversing the Trial Court's factual determination that there was no rational basis to support the classification, the Georgia Supreme Court nevertheless reversed the Trial Court's holding that the classification violated the equal protection clause of the Fourteenth Amendment.[39] The Georgia Supreme Court reasoned that since the Proposed Amendment treated alike all persons similarly situated within the area covered by the Amendment (Habersham County), then it did not matter whether the classification of Habersham County apart and by itself had any rational basis or not.[40] The Supreme Court of Georgia held that the Proposed Amendment could not, by creating a classification consisting of one county alone, violate the equal protection clause of the Fourteenth Amendment unless those persons within the County itself were not treated equally by the Amendment.[41] The Georgia Supreme Court thus in effect placed local constitutional amendment procedures under the Georgia Constitution beyond the reach of the Fourteenth Amendment by holding that a classification of a county or counties made by the Georgia General Assembly needs no rational basis to support it.

REASONS THE QUESTIONS PRESENTED ARE SUBSTANTIAL SO AS TO REQUIRE PLENARY CONSIDERATION

The decision of the Georgia Supreme Court holds that a local amendment to the Georgia Constitution which

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38. Appendix A, p. A6.
39. Appendix A, p. A5.
40. Appendix A, p. A6.
41. Appendix A, p. A6.

creates a territorial classification having no rational basis in fact does not violate the equal protection guarantee of the Fourteenth Amendment.[42] Such holding is in direct conflict with decisions of a number of state courts and at least one United States District Court which have held that territorial classifications, just as all other classifications by legislative act, must be founded upon a rational basis in order to be valid.[43] Although this Court has never specifically made such a determination, it has indirectly recognized the principle that territorial classifications are no different from any other type of classification with regard to constitutional requirements.[44] This case provides the Court with the opportunity to recognize explicitly the above principle, and thereby to make a much needed correction to the decision of the Georgia Supreme Court.

(a) The Decision of the Georgia Supreme Court That a Territorial Classification Does Not Need a Rational Basis to Withstand Constitutional Scrutiny Is Contrary to the Principles of Constitutional Requirements for Territorial Classifications Indirectly Recognized by This Court in Other Decisions.

The Georgia Supreme Court held that as long as all persons within the territory classified were treated equally, then there can be no denial of equal protection resulting from the classification of the territory itself.[45] It cer-

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42. Appendix A at p. A6.

43. See, e.g., *Walker v. Board of Supervisors*, 224 Miss. 801, 81 So.2d 225 (1955) cert. denied 350 U.S. 887, 76 S. Ct. 142, 100 L. Ed. 782.

44. *Id.*

45. Appendix A at p. A6.

tainly cannot be denied that a classification of a territory which results in persons within the territory classified being treated unequally would be unconstitutional unless there was a rational basis for such unequal treatment. It is equally true, however, that the territorial classification itself must have a rational basis. That is to say that there must exist a rational basis for classifying one county, such as Habersham County, apart from the remaining 158 counties in Georgia. If there is no rational basis for the classification of a county apart from the others, then the classification is not valid.

Therefore, the primary issue presented to this Court is fundamental and straightforward: Must a territorial classification created by an amendment to a state constitution have a rational basis in order to withstand scrutiny under the equal protection clause of the Fourteenth Amendment? Although not specifically articulated, past decisions of this Court indicate that a territorial classification, just as any other classification, must have a rational basis to be valid under the Fourteenth Amendment.

In *Walker v. Board of Supervisors*,[46] the Supreme Court of Mississippi held that territorial classifications must be properly based on differences between the areas and peoples within the classification and those without the classification in order to be valid. A petition for certiorari seeking to have this decision reversed was denied by this Court.[47]

Similarly, in a case involving the validity of a territorial classification the U.S. District Court for the Southern District of New York recently held that:

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46. 224 Miss. 801, 81 So.2d 225 (1955) cert. denied 350 U.S. 887, 76 S. Ct. 142, 100 L. Ed. 782.

47. 350 U.S. 887, 76 S. Ct. 142, 100 L. Ed. 782.

A territorial distinction which has no rational basis will not support a state statute. See *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed.2d 506 (1964); *Gordon v. Lance*, 403 U.S. 1, 4, 91 S. Ct. 1889, 1891, 29 L. Ed.2d 273 (1970).[48]

This Court affirmed the holding without opinion.[49]

A critical fact of the case *sub judice* which was determined by the Trial Court based upon the evidence submitted to it was that there was no rational basis to support the classification of Habersham County separate and apart from the remaining 158 counties in Georgia.[50] The Georgia Supreme Court apparently felt this fact was irrelevant if the population of Habersham County were all treated equally.

Left uncorrected, therefore, the decision of the Georgia Supreme Court will result in the law in Georgia being that territorial classifications established by local amendment to the Georgia Constitution do not need a rational basis. Such a rule would clearly be contrary to the equal protection requirements for territorial classifications which this Court has implicitly recognized. This Court should, therefore, note jurisdiction of this case and explicitly set forth the Constitutional requirements for territorial classifications.

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48. *Manes v. Goldin*, 400 F. Supp. 23 at 29 (S.D.N.Y. 1974) aff'd 423 U.S. 1068, 96 S. Ct. 851, 47 L. Ed.2d 80.

49. *Id.*

50. Appendix B, pp. A17-A19.

(b) The Decision of the Georgia Supreme Court Directly Conflicts With the Decisions of Other Courts Which Have Addressed This Issue.

As indicated above, the question of whether a territorial classification must be rationally based has been addressed by numerous other courts, both State and Federal.[51] The Courts have uniformly held that territorial classifications must be rationally based in order to be valid. The opinion of the Supreme Court of Georgia in the case *sub judice* is the only opinion which holds otherwise.

In *Walker v. Board of Supervisors*, the Supreme Court of Mississippi struck down a territorial classification as not being properly based.[52] The factual circumstances in *Walker* were almost identical to those of the case *sub judice*. The Mississippi legislature had enacted a law which levied an additional gasoline tax in one county only.[53] After a thorough analysis of the question of why that particular county was singled out, it became apparent to the Supreme Court of Mississippi that, in fact, there was no reason for the county to have been so classified.[54] Since the additional tax imposed a burden upon those purchasing gasoline in the county which was not imposed elsewhere in the State, and since there was no reason or basis for this burden to be suffered in that particular county, the Court struck down the tax as unconstitutional.[55]

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51. P. 10, *supra*.
52. 81 So.2d 225 at 231-234.
53. 81 So.2d at 228, 229, 232-233.
54. 81 So.2d at 232-233.
55. 81 So.2d at 234.

The parallels between *Walker* and this case are obvious. The only true difference between the cases is that in *Walker* the tax was on gasoline, and in the case at bar, the tax is on alcoholic beverages. Appellants maintain that the overpowering logic of the well-reasoned Mississippi decision is a correct analysis of the issue presented by this case. Thus this Court should note jurisdiction and reverse the opinion of the Georgia Supreme Court which holds to the contrary.

While *Walker* presents a practically identical fact situation, it is certainly not the only case in which a territorial classification without a rational basis has been struck down. In *Caldwell v. Mann*,[56] the Florida Supreme Court reached the same result.

Caldwell involved a challenge to an enactment which prohibited the possession, purchase, sale or offer for sale of certain fish and fish products between December 1 and January 20 of the succeeding year.[57] The purpose of this legislation had been to protect the fish population of the State.[58]

After the passage of the initial Act, however, several particular counties were removed from its coverage.[59] Suit was then brought to have the Act declared unconstitutional as creating a territorial classification lacking in rational basis.[60] In holding that the classification did in fact not have a rational basis and therefore did violate the equal protection guarantee, the Florida Supreme Court wrote:

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56. 157 Fla. 633, 26 So.2d 788 (1946).

57. 26 So.2d at 789.

58. 26 So.2d at 791.

59. 26 So.2d at 789.

60. 26 So.2d at 789.

> Classifications by counties or otherwise for the purpose of prescribing regulations or exactions that in effect impose burdens on some citizens of the state that in kind or extent are not imposed upon other citizens of the state under practically similar conditions, with no conceivably just basis for the classifications or discriminations, constitute a denial to those injuriously affected of the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution. *Harper v. Galloway*, 58 Fla. 255, 51 So. 226, 26 L.R.A., N.S., 794, 19 Ann. Cas. 235; *State ex rel. Clarkson v. Philips*, 70 Fla. 340, 70 So. 367, Ann. Cas. 1918A, 138; *Lewis v. State*, 110 Ark. 204, 161 S.W. 154; *State v. Hill*, 98 Miss. 142, 53 So. 411, 31 L.R.A., N.S., 490; 27 C.J. 947; 12 R.C.L. 694.[61]

Two other recent cases reaching conclusions on this issue contrary to that reached by the Georgia Supreme Court are *Manes v. Goldin*,[62] and *Weissman v. Evans*.[63] *Manes* has been discussed above.[64] In *Weissman*, the Appellate Division of the New York Supreme Court held exactly as the Georgia Supreme Court should have held in this case:

> It has been stated that equal protection does not require territorial uniformity of law within a State (*See Matter of Rosenthal v. Hartnett*, 36 N.Y.2d 269, 367 N.Y.S.2d 247, 326 N.E.2d 811; see, also, *Salsburg v. Maryland*, 346 U.S. 545, 74 S. Ct. 280, 98 L. Ed. 281). *However, a territorial distinction, without any ra-*

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61. 26 So.2d at 791.

62. 400 F. Supp. 23 (S.D.N.Y. 1974) aff'd 423 U.S. 1068, 96 S. Ct. 851, 47 L. Ed.2d 80.

63. 82 A.D.2d 441, 442 N.Y.S.2d 80 (1981).

64. Pp. 11, 12, *supra*.

tional basis, cannot withstand constitutional scrutiny (see *Manes v. Goldin*, 400 F. Supp. 23, 29, aff'd 423 U.S. 1068, 96 S. Ct. 851, 47 L. Ed.2d 80; *Richards v. Townsend*, 303 F. Supp. 793, mod. 9th Cir. 444 F.2d 528.[65] [Emphasis added.]

The same result has been reached by Courts in Maryland,[66] Arkansas,[67] Indiana,[68] South Carolina[69] and Massachusetts.[70] The opinion of the Supreme Court of Georgia is an aberration.

This Court should note jurisdiction of this case and correct the reasoning of the Georgia Court. The interpretation of the equal protection guarantee of the Federal Constitution should be universally the same, and not different in Georgia than in the remaining states.

(c) The Proposed Amendment Violates the Equal Protection Clause by Taxing Residents of Certain Municipalities Only While Enabling Those Residing Outside Those Municipalities to Receive the Benefit of the Tax.

As to the citizens of the Town of Baldwin and the citizens of the Town of Mt. Airy, the Proposed Amendment violates the equal protection clause of the Fourteenth Amendment for an additional reason. For the first time a county in the State of Georgia, which does not allow the

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65. 442 N.Y.S.2d at 82.

66. *Supermarkets General Corp. v. State*, 288 Md. 611, 409 A.2d 250 (1979) app. dismissed 449 U.S. 801, 101 S. Ct. 45, 66 L. Ed.2d 5.

67. *Lewis v. State*, 110 Ark. 204, 161 S.W. 154 (1913).

68. *Strube v. Sumner*, 385 N.E.2d 948 (Ind. App. 1978) app. dismissed 444 U.S. 1063, 100 S. Ct. 1002, 62 L. Ed.2d 745.

69. *Moseley v. Welch*, 218 S.C. 242, 62 S.E.2d 313 (1950)

70. *Opinion of the Justices to the Senate and the House of Representatives*, 341 Mass. 760, 168 N.E.2d 858 (1960).

sale of alcoholic beverages, voted to impose a tax upon certain specified municipalities which do allow the sale of alcoholic beverages.[71] The undisputed evidence at trial showed that the voters in all of Habersham County voted to impose a tax which would be collected only within the corporate limits of Baldwin and Mt. Airy.[72] No tax could be collected within the unincorporated areas of Habersham County nor within the other municipalities which do not permit the sale of alcoholic beverages.[73]

The constitutional evil in this type of voting procedure is both inherent and obvious. When the municipal voter in Baldwin or Mt. Airy stepped into the voting booth and cast his vote he voted, in essence, to impose or not to impose a tax which would apply to the political subdivision in which he resided. The reverse was true of the voters who resided either in the unincorporated areas of Habersham County or in the dry municipalities. These voters voted to impose a tax upon other political subdivisions in which they did not reside and of which they were not a member.

The local amendment imposed the tax on the "sale of" alcoholic beverages.[74] A "sale" could occur only within the wet municipalities.[75] A "sale" could be made only by residents of the wet municipalities.[76] And yet the taxes collected from the "sale of" alcoholic beverages would be used to benefit those who did not pay the tax.[77]

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71. Appendix B at pp. A15, A24-A25.
72. *Id.*
73. *Id.*
74. Appendix F at pp. A33-A34.
75. Ga. Code §5A-4302.
76. Appendix F at p. A15.
77. Appendix B at pp. A24-A25.

The citizens of unincorporated Habersham County and the citizens of the non-affected, dry municipalities, due to the fact that their political subdivisions do not permit the sale of alcoholic beverages, voted to levy a tax which applied only to the citizens of the wet municipalities.[78] This allowed the residents outside the affected municipalities of Habersham County to receive the same benefits as the affected municipalities but not pay the same tax.[79]

Allowing the voters of one political subdivision, without taxing themselves, to tax the voters of another political subdivision has dire implications for the election process and is certainly the type of situation which the equal protection clause sought to prevent. As stated previously in this brief the alcohol tax is classified geographically within the State of Georgia in that Habersham County is singled out from other counties for taxation.[80] The tax is also geographically classified within Habersham County itself because only certain, wet municipalities are taxed. The municipalities were arbitrarily and without reason selected for taxation. Appellants respectfully submit that this Court should note jurisdiction of this Appeal and correct the error of the Georgia Supreme Court.

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78. Appendix B at pp. A24-A25.

79. Appendix B at pp. A17-A18.

80. See *Richmond County v. Richmond County Business Association*, 228 Ga. 281, 185 S.E.2d 399 (1971).

CONCLUSION

For the reasons set forth in this Jurisdictional Statement, jurisdiction of this appeal should be noted, and the decision of the Georgia Supreme Court reversed.

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APPENDICES

APPENDIX A

IN THE SUPREME COURT OF GEORGIA

38359

BURNES E. SIMS et al.

v.

THE TOWN OF BALDWIN et al.

38360

BURNES E. SIMS et al.

v.

WILLIAM N. GRIFFIN et al.

GREGORY, Justice.

At its 1980 session the General Assembly passed a resolution proposing two local amendments to the Georgia Constitution directly affecting Habersham County. The first, upon ratification, authorized "the Board of Education of Habersham County to direct the governing authority of Habersham County to impose throughout the entire county certain excise taxes on alcoholic beverages sold within Habersham County and to authorize said Board to receive funds derived from such taxes and expend same for educational purposes within the Habersham school district." Ga. Laws 1980, pp. 2280 et seq. The second resolution authorized, upon ratification, "an exemption [within certain restrictions] from all Habersham County ad valorem taxes for school purposes on the full value of the homestead . . . for each resident who is 65 years of age or over and each resident who is totally disabled." Ga. Laws 1980, pp. 2283 et seq. Both proposed local amendments were submitted to the voters of Habersham County at the 1980 general election, and both

were adopted by a majority of voters in Habersham County. Code Ann. § 2-6901; Ga. Laws 1981, p. 2174.

Following certification of the election results, the Board of Education of Habersham County adopted a resolution directing the Board of Commissioners to impose the excise taxes on alcoholic beverages as authorized by the local amendment. Ga. Laws 1980, pp. 2280. The Board of Commissioners adopted a resolution making the excise taxes effective April 1, 1981. Prior to the effective date of the taxes, appellees filed separate suits in superior court, seeking to have this local amendment declared unconstitutional under the due process and equal protection clauses of the 14th Amendment. The cases were consolidated for trial. The trial court determined that the local amendment violated the 14th Amendment to the U. S. Constitution and permanently enjoined the collection of the taxes. This appeal followed.

(1) The procedure for amending the Georgia Constitution, either by general or by local amendment, is set out in Article XII, Section I, Paragraph I of the Georgia Constitution; Code Ann. § 2-6901. The Georgia Constitution requires the General Assembly to approve a resolution to propose an amendment to the Constitution by the votes of two-thirds of the elected members of each branch. Then the "Governor, the Attorney General, and the Secretary of State shall meet and determine whether a proposed amendment is general, and if not general, shall determine what political subdivision or subdivisions are directly affected by such proposed amendment." If the proposed amendment is general, it must be published in one newspaper of general circulation in each Congressional District in the state once weekly for three consecutive weeks preceding the election at which it is to be submitted. If the proposed amendment is local, it need only be published for three consecutive weeks "in the newspapers of general

circulation in each county in which the directly affected political subdivision or subdivisions are located." A general amendment must be submitted "to the people of the entire State," while a local amendment "shall only be submitted to the people of the political subdivision or subdivisions directly affected." In either case the proposed amendment must be ratified by a majority of the electors before it becomes a part of the Constitution.

The tendency to amend the Georgia Constitution by amendments which apply solely to an isolated political subdivision of the State has met considerable criticism. It has been calculated that between 1947 and 1967, the Georgia Constitution was amended 549 times; 466 of these amendments had local application only.[1] In 1980, 104 local amendments were made to the Georgia Constitution. See Ga. Laws 1981, pp. 2155-2187. In *Roberts v. Suttles*, 212 Ga. 138, 141-2 (91 SE2d 32) (1956), this court cautioned "that [the local amendment] is a very dangerous way in which to deal with the fundamental law of our state, and that the Constitution is rapidly becoming a hodge-podge of so-called general provisions with local application. . . [T]he fundamental law of our State, the Constitution, by this method is being undermined and destroyed. We, however, have no legislative authority, and when the General Assembly proposes to the people of Georgia an amendment to the Constitution, and it is duly approved, it becomes binding upon this court and we can do nothing but give it effect."[2]

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1. Pound and Saye, *Handbook on the Constitutions of the United States and Georgia* (1967), p. 72. In this regard see Professor Saye's article, "Constitutional Law," 12 Mercer Law Review 28 (1960); 5 EGL, Constitutional Law §58, pp. 362.

2. We acknowledge, however, that any amendment, general or local, to the Georgia Constitution must not violate the mandates of the United States Constitution. See, e.g. *Richmond County v. Richmond County Business Association*, 228 Ga. 281 (185 SE2d 399) (1971).

(2) (a) In an order making lengthy findings of fact, the trial court determined that, if imposed, the excise tax would raise the malt beverage tax in Habersham County to the highest such tax in the United States; that only three municipalities in Habersham County authorize the sale of alcoholic beverages; that the unincorporated areas of Habersham County do not authorize the sale of alcoholic beverages; that sales of alcoholic beverages in Habersham County will decline "50-55%" if the tax is imposed; and that all residents of Georgia will be "irreparably damaged" by being required to pay a higher tax on alcohol when purchased in Habersham County than when purchased in any other county in the state. The trial court also found that the local amendment classifies Habersham County in a manner different from all other counties in the state, and imposes a burden on those who sell and purchase alcoholic beverages in Habersham County which is not imposed on similarly situated sellers and purchasers located elsewhere in the state. The trial court determined that "since the Defendants [appellants] have pointed out no unique need or other characteristic possessed by Habersham County which distinguishes the County from other counties of the State and justifies special classification . . . the additional excise tax on alcoholic beverages levied pursuant to the Proposed Amendment denies equal protection of the laws under the United States Constitution."

(b) We note at the outset that the trial court erred in placing the burden of showing the reasonableness of the local amendment on the appellants. "[I]n taxation, even more than in other fields, legislatures possess the greatest freedom in classification. . . There is a presumption of constitutionality which can be overcome 'only by the most explicit demonstration that a classification is a

hostile and oppressive discrimination against particular persons and classes'. . . The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." Lehnhausen v. Lake Shore Auto Parts Co., 410 U. S. 356, 364 (93 SC 1001, 35 LE2d 351) (1972), rehearing denied 411 U. S. 910 (1972); Madden v. Kentucky, 309 U. S. 83 (60 SC 406, 84 LE 590) (1940). Thus, while it was not the legislature, but the electors of Habersham County who classified the county in a manner different from other counties in the state, the burden at trial was on appellees to "negative every conceivable basis which might support" the local amendment. Lehnhausen, supra, at 364.

(c) At trial appellants maintained that in proposing the local amendment the legislature intended to insure that revenues generated from the excise taxes on alcoholic beverages would offset the deficit created in ad valorem school taxes by the simultaneously proposed homestead exemption. Therefore, appellants urged, the classifications created by the local amendment authorizing an excise tax on alcohol were "founded on material differences and substantial distinctions which bear a proper relation to the matters . . . dealt with by the [amendment] and to the purpose sought to be accomplished." *Richmond County v. Richmond County Business Association*, 228 Ga. 281, 283 (185 SE2d 399) (1971). Appellants argue that the classification is thus valid under the equal protection clause. For the reasons set out below, we agree with appellants that the local amendment does not classify Habersham County in a manner violative of the equal protection clause.

We have outlined above the procedure by which the Georgia Constitution may be amended by an amendment which "directly affects" a single county or other political

subdivision of the State. Code Ann. § 2-6901. Each time the electors of a county vote to adopt a local amendment directly affecting that county, they classify their county in a manner different from other counties in the State. The fact that the Georgia Constitution is different in Habersham County than it is in any other county in the State is inescapable.[3] The Constitution provides that a local amendment shall apply only to the political subdivision "directly affected" by the amendment. Ga. Const. Art. XII, Sec. I, Para. I; Code Ann. § 2-6901. Conversely, counties or other political subdivisions outside the territorial application of the amendment are not "directly affected" by the amendment. If a local amendment is otherwise valid under Code Ann. § 2-6901, there can be no claim that the amendment violates equal protection of the laws because it classifies a county in a manner different from other counties in the state. By local ordinances or pursuant to the authority of the County Home Rule Amendment, a county may classify itself in a manner different from all other counties in the state. The fact that County A authorizes the sale of liquor while County B does not does not mean that County B has been denied equal protection of the laws. Likewise, the fact that the electors of Habersham County have amended the Georgia Constitution to affect Habersham County in a manner in which other counties have not amended the Constitution does not state an equal protection claim. An equal protection issue arises when the local amendment attempts to classify similarly situated persons or property within the political subdivision directly affected

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3. In 1980 the General Assembly proposed a local amendment authorizing the imposition of excise taxes on alcoholic beverages in Towns County which was identical to the local amendment ratified in Habersham County. Ga. Laws 1980, pp. 2029 et seq. However, the electors of Towns County voted to not adopt the amendment. Ga. Laws 1981, pp. 2182-3.

by the amendment in an arbitrary manner. Thus we hold the trial court erred in concluding that the local amendment classifies Habersham County in a manner violative of the equal protection clause.

(d) Appellees also argue that the local amendment creates an impermissible classification by placing a higher tax on liquor sold in that portion of the City of Baldwin located in Habersham County than that portion of the City of Baldwin located in Banks County. "It has been held that so long as the law operates alike on all members of the class which includes all persons and property similarly situated, it is not subject to any objection that it is special or class legislation." *McLennan v. Aldredge*, 223 Ga. 879, 886 (156 SE2d 682) (1967). The "class" to which the local amendment applies in this case, as found above, is Habersham County. Clearly the local amendment applies only within Habersham County's territorial limits. Appellees concede that all liquor sold within Habersham County is uniformly subject to the excise taxes authorized by the local amendment. Thus, while the effect of the excise taxes may be to raise the price of liquor in Habersham County higher than in other counties, all similarly situated persons and property within the county are treated equally. We find no violation of equal protection.

(3) While appellees urge that the local amendment violates the due process clause of the 14th Amendment, they have articulated no rationale under which the due process clause is applicable. Therefore, we do not reach this argument. See, *Ingalls Iron Works Co. v. Chilivis*, 237 Ga. 479 (228 SE2d 866) (1976).

(4) The trial court determined that the challenged local amendment "affects all citizens of this State" and,

as such, was a general rather than local amendment. The trial court concluded that since the amendment was not advertised throughout the state nor voted on by the entire state it was not lawfully ratified as required by Code Ann. § 2-6901. We do not agree. While it is true that persons residing outside Habersham County may purchase alcoholic beverages there and thus be subject to a higher tax than elsewhere in the state, it is clear that the proposed amendment is a local amendment within the meaning of Code Ann. § 2-6901. Habersham County is the political subdivision "directly affected," and the amendment was properly submitted to Habersham County voters alone. Thus the trial court erred in determining that because the amendment was not submitted to the entire state, it was not properly ratified.

(5) The only alcoholic beverages sold in Habersham County are sold in the towns of Baldwin, Mt. Airy and Clarkesville. The trial court found that "the amendment taxes only the citizens of Baldwin, Mt. Airy and Clarkesville while allowing the residents of the other areas of the county to receive the same benefits as those within these municipalities but not pay the same tax." Relying on *City of Lithonia v. DeKalb County Board of Education*, 231 Ga. 150 (200 SE2d 698) (1973), the trial court determined that allowing the residents of the unincorporated areas of the county to vote to impose a tax on the residents of the municipalities violates equal protection of the laws. The trial court's reliance on this case is misplaced. In *City of Lithonia*, alcoholic beverages were sold both in the municipalities of DeKalb County and in unincorporated DeKalb County. Lithonia challenged the propriety of the ratification of a local amendment authorizing the imposition of an excise tax on the sale of alcoholic beverages throughout the county. The local amendment pro-

vided that half of the revenues generated from this tax were to be used to "provide local education." 231 Ga. at 151. Lithonia contended that the amendment could not be validly ratified without the approval of the majority of voters in each municipality in DeKalb County. We rejected this argument, finding "[t]he proposed amendment could not have been properly submitted [to the voters] in this manner. It would have permitted the municipalities situated in the school districts to reject it, while permitting the licenses and taxes to be levied in the unincorporated areas of DeKalb County. Such a result would be a patent violation of the due process and equal protection clauses of the State and Federal Constitutions by taxing only those citizens of unincorporated DeKalb County while allowing the residents of the municipal areas therein to receive the same benefits as those in the unincorporated areas, but not pay the same tax." 231 Ga. at 153. Our determination that separate tabulations of the votes would violate equal protection was based on the fact that liquor was sold in *both* the municipalities and the unincorporated areas of DeKalb County. If the municipalities were permitted to sell liquor tax-free but to reap the benefits from taxes imposed on liquor in the unincorporated areas of the county, a violation of equal protection would result. All similarly situated property would not be taxed in the same manner. In this case, however, all liquor sold in the county will be uniformly taxed under the local amendment. The fact that liquor is not sold in the unincorporated areas of Habersham County does not, without more, illustrate a violation of equal protection. Any resident of Habersham County who purchases alcoholic beverages within the county limits will be required to pay the excise tax; all residents of the county will benefit from the taxes collected on alco-

holic beverages. Allied Stores of Ohio v. Bowers, 358 U. S. 522, 526 (79 SC 437, 3 LE2d 480) (1958); Carmichael v. Southern Coal &c., 301 U. S. 495 (57 SC 868, 81 LE 1245) (1937); *Ingalls Iron Works v. Chilivis*, 237 Ga. 479 (228 SE2d 866) (1976).

(6) Because of the result we reach in this opinion, we do not reach appellants' remaining enumeration of error.

Judgment reversed. All the Justices concur.

DECIDED April 21, 1982

APPENDIX B

IN THE
SUPERIOR COURT OF HABERSHAM COUNTY
STATE OF GEORGIA

CIVIL ACTION FILE NO. 107-81

WILLIAM N. GRIFFIN, et al.,
Plaintiffs,

vs.

DAVID BURRELL, et al.,
Defendants.

CIVIL ACTION FILE NO. 123-81

TOWN OF BALDWIN, et al.,
Plaintiffs,

vs.

DAVID BURRELL, et al.,
Defendants.

FINDINGS OF FACT
CONCLUSIONS OF LAW
ORDER

The above-styled cases were filed in this Court seeking, inter alia, declaratory judgments declaring Georgia Laws 1980, pp. 2280 unconstitutional on various grounds. The actions further sought to enjoin the collection of the additional excise taxes sought to be levied pursuant to the authority contained in Georgia Laws 1980, pp. 2280, by resolutions of the Habersham County Board of Education

and the Habersham County Commission. As the actions involved common questions of law and fact, and as all parties through their counsel of record consented to the consolidation of these two cases, they were consolidated and were heard by this Court on April 27, 1981. For the reasons that follow, the Court holds that the Proposed Amendment found at Georgia Laws 1980, pp. 2280 is indeed unconstitutional, violative of the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution, as well as Article I, Section I, Paragraph I (Code §2-101) and Article I, Section II, Paragraph III (Code §2-203) of the Georgia Constitution. The Proposed Amendment was improperly ratified and thus did not become part of the Constitution of the State. The Court thus permanently enjoins the collection of any tax purportedly authorized to be levied thereunder.

FINDINGS OF FACT

Based upon the evidence presented to this Court, it finds the following matters to be true as facts:

Background Facts

(1) The Georgia General Assembly in its 1980 session passed a resolution proposing a local constitutional amendment authorizing the levying of an additional excise tax on all alcoholic beverages sold within Habersham County, Georgia Laws 1980, pp. 2280; (the "Proposed Amendment").

(2) The Proposed Amendment authorized the Habersham County Board of Education ("Board of Education") to direct by resolution the Habersham County Commission ("Commission") to levy additional taxes upon alcoholic beverages sold in Habersham County at the following rates:

(a) Five cents per 12 ounces and a proportionate tax at like rate on bottles, cans, and containers of various sizes on the sale of malt beverages within Habersham County. A tax on tap or draft beer sold within Habersham County at a rate of $6.00 for each barrel or bulk container containing 15 1/2 gallons, and a proportionate tax at like rate for containers of various sizes.

(b) Twenty-five cents per gallon, and a proportionate tax at like rate on fractional parts of a gallon, on the sale within Habersham County of wines, whether produced from fruits or berries grown within or without the State, having an alcoholic content of 14 percent or more by volume.

(c) Eighty cents per gallon, and a proportionate tax at like rate on fractional parts of a gallon, on the sale within Habersham County of distilled spirits or spiritous liquors.

(3) The revenue raised by the imposition of these taxes was to be paid to the County which would then remit it to the Board of Education to be used for school purposes.

(4) On February 9, 1981, the Board of Education met and adopted a resolution directing the Commission to impose the additional alcoholic beverage excise taxes purportedly authorized by the Proposed Amendment.

(5) On March 2, 1981, the Commission adopted a resolution levying the additional taxes effective April 1, 1981.

(6) The Proposed Amendment and the resolutions enacted pursuant thereto proposed to levy a tax on all in-

dividuals legally able to purchase alcoholic beverages in Habersham County at the following rates:

(a) Five cents per 12 ounces and a proportionate tax at like rate on bottles, cans, and containers of various sizes on the sale of malt beverages within Habersham County. A tax on tap or draft beer sold within Habersham County at a rate of $6.00 for each barrel or bulk container containing 15 1/2 gallons, and a proportionate tax at like rate for containers of various sizes.

(b) Twenty-five cents per gallon, and a proportionate tax at like rate on fractional parts of a gallon, on the sale within Habersham County of wines, whether produced from fruits or berries grown within or without the State, having an alcoholic content of 14 percent or more by volume.

(c) Eighty cents per gallon, and a proportionate tax at like rate on fractional parts of a gallon, on the sale within Habersham County of distilled spirits or spiritous liquors.

(7) Alcoholic beverages sold within Habersham County are subject to normal state and local taxes in accordance with Title 58 of the Georgia Code, and after July 1, 1981 in accordance with Title 5A of the Georgia Code.

(8) The State of Georgia currently has the highest tax rate on malt beverages of any state in the United States.

(9) The additional malt beverage tax which would be imposed pursuant to the Proposed Amendment would raise the malt beverage tax in Habersham County to the highest rate in the United States.

(10) Habersham County is a "dry" county in which alcoholic beverages may not be legally sold.

(11) Habersham County contains three (3) "wet" municipalities in which some or all alcoholic beverages may be sold, Baldwin, Mt. Airy and Clarkesville.

(12) The Town of Baldwin, Georgia, lies both in Habersham County and Banks County.

(13) The governing officials of Habersham County have refused to issue alcoholic beverage licenses in unincorporated Habersham County.

(14) The governing officials of Habersham County presently show no inclination to issue alcoholic beverage licenses in unincorporated Habersham County in the future.

(15) The ordinance of the Town of Baldwin permitting the sale of alcoholic beverages within the municipal limits of Baldwin requires that the licensee reside in Baldwin.

(16) The ordinance of the Town of Mt. Airy permitting the sale of alcoholic beverages within the municipal limits of Mt. Airy requires that the license reside in Mt. Airy.

(17) Approximately forty (40) cents per case would be added to the price of malt beverages sold in Habersham County by the retailers in the three towns where malt beverages may legally be sold.

Facts Dealing With Parties and Damage Which Would Be Suffered

(18) Plaintiff William N. Griffin ("Griffin") is a resident of DeKalb County, Georgia and is at least nineteen years of age.

(19) Griffin is not a habitual drunkard.

(20) Griffin does not labor under any disability which would prevent him from purchasing alcoholic beverages.

(21) The residents of Georgia purchasing alcoholic beverages in Habersham County, including Griffin, will be irreparably damaged by the levying of the additional alcoholic beverage excise tax due to their being required to pay an increased price caused by such tax.

(22) The Wholesaler Plaintiffs in this action are all lawfully licensed to sell and do sell malt beverages within Habersham County.

(23) If the additional tax on malt beverages is imposed, Wholesaler Plaintiffs will incur increased administrative and operational costs.

(24) If the additional excise taxes were levied, sales of malt beverages in Habersham County would drop 50-55 percent.

(25) If sales of malt beverages decrease in Habersham County, wholesalers selling to retailers in Habersham County will experience a net loss of sales revenue which will not be compensated for by increased sales in surrounding counties.

(26) The excise tax on malt beverages sold in South Carolina is approximately 50 percent of what the tax would be in Habersham County if the additional tax were levied.

(27) If the additional malt beverage tax is imposed, a portion of malt beverages currently purchased in Habersham County will be purchased in South Carolina, and bootlegged into Georgia for resale and consumption, because of the lower price in South Carolina.

(28) The additional excise tax will cause the Wholesaler Plaintiffs to lose sales which they cannot recoup elsewhere, as well as increasing their operational and administrative expenses, and thus the Wholesaler Plaintiffs will be irreparably and permanently damaged by the imposition of such additional excise tax.

(29) Georgia Beer Wholesalers Association, Inc. ("GBWA") is a Georgia not-for-profit corporation which receives its revenues from its members, licensed beer wholesalers in Georgia. Dues of members in GBWA are based in part upon the sales of member wholesalers.

(30) If wholesalers of malt beverages in Habersham County lose sales, the revenue of the Plaintiff GBWA will decrease.

(31) If revenue of GBWA decreases there will be no corresponding reduction in costs incurred by GBWA.

(32) GBWA would thus be forced to curtail a portion of its activities which affect not only Wholesaler Plaintiffs, but all member wholesalers, including those not selling in Habersham County.

(33) GBWA will thus be irreparably and permanently damaged by the imposition of the additional malt beverage excise tax.

Facts Pertinent to Equal Protection Issue

(34) The Proposed Amendment applies only to Habersham County.

(35) The Proposed Amendment classifies sellers and purchasers of alcoholic beverages in Georgia into two categories and thereby creates a territorial classification which differentiates between sellers and purchasers of alcoholic beverages in Habersham County and sellers and

purchasers of alcoholic beverages in all other counties in this State.

(36) Since the Proposed Amendment applies only to Habersham County, no other county or counties of this State can come within the class consisting of Habersham County alone, regardless of whether or not other such counties have the same needs or face the same problems.

(37) The Proposed Amendment would impose a burden upon those who sell and purchase alcoholic beverages in Habersham County which is not imposed on such purchasers and sellers in other counties; to purchasers, in the form of additional tax; to sellers, in the form of increased administrative and operational costs and sales losses. This burden would apply nowhere else in this State.

(38) There is no factual support or factual basis for classifying purchasers and sellers of alcoholic beverages in Habersham County separate and apart from all other such purchasers and sellers in this State.

(39) Habersham County possesses no unique need for educational funds which distinguishes it from all other counties in Georgia.

(40) Habersham County ranks economically in the top 29 percent of the counties in the State of Georgia according to the master economic rank of the State Revenue Commissioner (State Revenue Commissioner's 1980 Statistical Report).

(41) Proposed local amendments increasing property tax exemptions were proposed in 63 municipalities and counties at the 1980 General Election, and were ratified in 58.

(42) None of said 63 municipalities and counties are able to generate additional revenue through the im-

position of the malt beverage excise tax proposed by the Proposed Amendment since said Amendment applies only to Habersham County.

(43) The Proposed Amendment contains no severability clause.

Facts Pertinent to Adoption and Ratification Issue

(44) On November 4, 1980 the Proposed Amendment was presented to the electorate of Habersham County for its approval.

(45) On November 4, 1980, at the general election for the State of Georgia, the above referenced amendment was submitted to the voters of Habersham County. In said election votes were cast by voters both within and without the municipalities located within Habersham County. The votes were tabulated according to voting districts which were not coterminous with the boundaries of the municipalities so that it is impossible to determine whether a majority of the voters in any municipality voted in favor of said amendment. A majority of the voters in Habersham County voted for the amendment.

(46) The Proposed Amendment was approved by the electorate of Habersham County.

(47) The Proposed Amendment was not submitted to the statewide electorate nor was it advertised in the manner required of general constitutional amendments. The Proposed Amendment affects the residents of the entire State, and not the residents of Habersham County only, because it requires all residents of Georgia, including Griffin, who would purchase malt beverages in Habersham County, to pay $1.60 more per case for malt beverages purchased in Habersham County.

CONCLUSIONS OF LAW

Equal Protection

(1) Equal protection of the law requires that the law operate alike on all persons or property similarly situated. *McLennan vs. Aldredge*, 223 Ga. 879 (5) (1979), *Blackmon vs. Monroe*, 233 Ga. 656, 659 (1975).

This basic tenet of constitutional law does not mean, of course, that the Georgia General Assembly cannot create classifications for tax purposes and impose different tax rates on different classes. Furthermore, classifications for tax purposes may be made by territory (e.g. by county or other political subdivision), and where no specific federal right apart from equal protection is imperiled, the States have a large amount of discretion in making classifications and drawing lines in producing what they view as a reasonable system of taxation. *Ingalls Ironworks Co. vs. Chilivis*, 237 Ga. 469 (1976), *Great Northern Nekoosa Corp. vs. Board of Tax Assessors of Early County, Georgia*, 244 Ga. 624 (2) (1976), *Lehnhausen vs. Lakeshore Auto Parts Co.*, 410 U.S. 356, 359 (2), 93 S.Ct. 1001 (1974).

(2) As held by the Supreme Court of Georgia, however, in order to be constitutional and non-violative of the Equal Protection Clause of the Fourteenth Amendment, classifications must be "founded on material differences and substantial distinctions which bear a proper relation to the matters or persons dealt with by the legislation and to the purpose sought to be accomplished." *Richmond County vs. Richmond County Business Association*, 228 Ga. 281, 283; 185 S.E. 2d 399, 401.

The Supreme Court of Mississippi also voiced the above principle more directly concerning the classification of one county separate and apart from all other counties of the State when it stated that,

> . . . [T]he classification must be based on some reasonable ground which distinguishes the county or counties to which it is intended to apply from other counties in the state; that is to say, it must bear some reasonable relation to the problem involved to distinguish the county for special classification. *Walker vs. Board of Supervisors*, 81 So. 2d 225 at 234.

See also *McCarthy vs. Jones*, 449 F. Supp. 480 (1978). (State statute providing for taxation of property in the same class at different ratios in different counties on a purely arbitrary basis held to violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution).

The Proposed Amendment singles out Habersham County for unique treatment. It creates a class consisting of Habersham County alone. [See Findings of Fact No. 34 and 35]. Furthermore, the class is closed; no other county may ever become a member of that class regardless of whether or not such other county might have the same characteristics as does Habersham County. [See Findings of Fact No. 36]. Thus another county of the State which might be similarly situated as Habersham County will not receive the same treatment under the law as will Habersham County.

The critical question for this case becomes, then, whether or not the territorial classification of Habersham County separate and apart from all other counties in the State is "founded on material differences and substantial distinctions which bear a proper relation to the matters or persons dealt with by the legislation and to the purposes sought to be accomplished." Or, using the language of the Supreme Court of Mississippi, is the classification of Habersham County based on some reasonable ground which dis-

tinguishes it from the other counties of the State, and does the basis for the classification bear some reasonable relation to the problem involved so as to distinguish the county for special classification?

Stated more plainly, what unique need or other characteristic did the General Assembly believe Habersham County possessed such that would justify an alcoholic beverage tax to provide educational revenues for the County? There has been no evidence presented to this Court which indicates that Habersham County possesses any such unique need or characteristic. It has not been shown that Habersham County has a need for educational revenues which is any greater or any different from the similar need of other counties in the State; nor has any evidence been presented suggesting a unique need or justification for special legislation such as the Proposed Amendment.[1] Indeed, the only evidence introduced at trial concerning the economic status of Habersham County indicated that Habersham ranks economically within the top 29 percent of counties in Georgia. [See Findings of Fact No. 40.]

(3) Consequently, since the Defendants have pointed out no unique need or other characteristic possessed by

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1. Although it may be suggested that the additional excise tax on alcoholic beverages was necessary to compensate for revenue lost through Habersham County's increased Homestead Property Tax Exemption made available to certain residents of Habersham County, such argument must fail. No evidence was presented to this Court indicating that there would be lost revenue due to the increased exemption, but even if there had been evidence indicating a decrease in revenue, there could have been no evidence that such lost revenue was unique to Habersham County. It was pointed out to this Court that additional Homestead Tax Exemption amendments were proposed in 63 counties and municipalities on the last general election ballot and 58 of these proposed amendments were ratified and became part of the State Constitution. Ga. Code Ann. §2-4604. The above clearly indicates there is nothing unique about Habersham County's losing revenue because of an additional Homestead Tax Exemption.

Habersham County which distinguishes the County from other counties of the State and justifies special classification, and since the Court has been unable to find such a distinguishing characteristic, the Court is compelled to hold that the classification of Habersham County separate and apart from all other counties of the State is not founded on material differences and substantial distinctions which bear a proper relation to the additional taxation of malt beverages in said County or to the generation of revenue for the County's educational system. There is nothing which distinguishes Habersham County's need for educational funds from the similar need of other counties in the State. Habersham County has no need or characteristic which justifies special classification. Therefore this Court holds that the additional excise tax on alcoholic beverages levied pursuant to the Proposed Amendment denies equal protection of the laws under the United States Constitution.

Adoption and Ratification

(4) The Georgia Constitution provides that general proposed constitutional amendments should be approved by the voters of the entire State in a general election in order to become part of the Constitution. *Ga. Code Ann.* §2-6901.

(5) Proposed amendments which are not general need only be approved by the voters of the "political subdivision or subdivisions directly affected." *Ga. Code Ann.* §2-6901.

(6) Similarly, while general proposed amendments must be advertised throughout the State, nongeneral proposed amendments must be advertised only in the "directly affected political subdivision or subdivisions." *Ga. Code Ann.* §2-6901.

(7) Therefore, whether a proposed constitutional amendment is or is not general would appear to hinge on whether the proposed constitutional amendment directly affects citizens of the State as a whole or merely affects citizens of one or more political subdivisions within the State. The Proposed Amendment impacted the population of the entire State. [See Findings of Fact No. 46].

(8) Constitutional provisions regarding amendment procedures must be followed to the letter for the Proposed Amendment to be valid. *McCullers vs. Williamson*, 221 Ga. 356; 144 S.E. 2d 911, 915 (1965); *Seago vs. Richmond County*, 218 Ga. 151, 154; 126 S.E. 2d 657 (1962). The Proposed Amendment in the case at bar was not voted upon by the population of the State, and was not submitted and advertised as required by law. [See Findings of Fact No. 46].

(9) Since the Proposed Amendment in this action affects all citizens of this State, but since it was submitted only to the electorate of Habersham County, and since it was not properly advertised in each congressional district as required for general constitutional amendments by the State Constitution, it was improperly ratified. The enforcement of taxation legislation passed pursuant to a state constitutional amendment not ratified by the "directly affected area" would violate the Due Process and Equal Protection clauses of the Georgia and United States Constitutions. *City of Lithonia vs. DeKalb County Board of Education*, 231 Ga. 150; 200 S.E. 2d 698 (1973).

(10) The manner in which the amendment levying the tax upon alcoholic beverages was voted upon violated the Due Process and Equal Protection clauses of the State and Federal Constitutions. The amendment taxes only the citizens of the Towns of Baldwin, Mt. Airy and Clarkesville while allowing the residents of the other areas of

the County to receive the same benefits as those within these municipalities but not pay the same tax. *City of Lithonia vs. DeKalb County Board of Education*, 231 Ga. 151; 200 S.E. 2d 698 (1973).

(11) Thus said amendment is without effect, and the taxes purportedly levied by the resolutions of the County Commission and Board of Education enacted pursuant thereto are ultra vires and are without authority. *DeKalb County vs. Brown Builders Co.*, 227 Ga. 777, 183 S.E. 2d 367 (1977), *Commissioners of Chatham County vs. Savannah Elec. etc. Co.*, 215 Ga. 636, 637; 112 S.E. 2d 655, 657 (1960). Even if it is later held that the proposed amendment was properly adopted and thus not subject to state constitutional attack, *Hammond vs. Clark*, 136 Ga. 313 (10), 71 S.E. 479 (1911), *State vs. Ashmore*, 236 Ga. 401, 404, 224 S.E. 2d 334 (1976), the amendment could still be attacked as in violation of the United States Constitution. A state constitutional amendment can violate the United States Constitution even if it is not held to violate the state's constitution. 16 Am. Jur. 2d §32, Constitutional Law, p. 346. *Pope vs. City of Atlanta*, 240 Ga. 177, 178, n.1 (1), 240 S.E. 2d 241 (1977).

ORDER

THEREFORE, IT IS ORDERED AND ADJUDGED that the Proposed Amendment found at Georgia Laws 1980, pp. 2280 and any taxes purportedly levied pursuant thereto by the resolutions of the Board of Education and Commission be and hereby are declared unconstitutional, violative of the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution as well as Article I, Section I, Paragraph I (Code §2-101) and Article I, Section II, Paragraph III (Code §2-203) of the Georgia Constitution. The Proposed Amendment au-

thorizing the imposition of said taxes was improperly ratified and consequently is not part of the Constitution of the State. Thus the resolutions and taxes are ultra vires and void.

The Habersham County Commission is, therefore, permanently enjoined from collecting said taxes and from attempting to reimplement said taxes. The Habersham County Board of Education is also permanently enjoined from attempting to reimplement said taxes.

SO ORDERED this 7th day of August, 1981.

/s/ Jack N. Gunter
Jack N. Gunter, Judge
Mountain Judicial Circuit
Superior Courts

APPENDIX C

IN THE
SUPERIOR COURT FOR THE COUNTY
OF HABERSHAM
STATE OF GEORGIA

CIVIL ACTION FILE NO. 107-81

WILLIAM N. GRIFFIN, B & B BEVERAGE CO., BILL LAITE DISTRIBUTING CO., CLASSIC CITY BEVERAGES, INC., GEORGIA CROWN DISTRIBUTING CO., NORTHEAST SALES DISTRIBUTING, INC., PREMIUM DISTRIBUTING CO., INC., AND GEORGIA BEER WHOLESALERS ASSOCIATION, INC.,

Plaintiffs,

vs.

DAVID BURRELL, FRANK FERGUSON, JAY McNABB, Individually and as Members of the HABERSHAM COUNTY COMMISSION, HOYT F. ADAIR, Individually, and as the TAX COMMISSIONER OF HABERSHAM COUNTY, JAMES HOLCOMB, BURNES E. SIMS, CHARLES ENGLISH, FRED HOLBROOKS, MARTHA SIKES, Individually and as Members of THE BOARD OF EDUCATION OF HABERSHAM COUNTY, HABERSHAM COUNTY, GEORGIA, THE BOARD OF EDUCATION OF HABERSHAM COUNTY, GEORGIA, and THE HABERSHAM COUNTY COMMISSION,

Defendants.

JUDGMENT ON REMITTITUR

The above stated case having been carried to the Supreme Court of Georgia, and the said Supreme Court of Georgia, at the March Term, 1982, having reversed the decision of this Court and having declared the Local Amendment to the Constitution of Georgia authorizing the levy of an excise tax on alcoholic beverages sold in

Habersham County, with such taxes to be used for educational purposes, to be valid and not in violation of the Constitution of Georgia or the Constitution of the United States.

Upon motion for Counsel for Defendants, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the Supreme Court of Georgia is hereby made the judgment of this Court and judgment is hereby entered in favor of defendants on all issues in regard to said Constitutional Amendment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant members of the Board of Education of Habersham County do have and recover from the Plaintiffs in the above styled case the sum of ONE HUNDRED THIRTY-SIX AND NO/100 ($136.00) DOLLARS, costs, expended in the defense of the above styled case and in prosecution of their appeal to the Supreme Court of Georgia.

Entered this 13th day of May, 1982.

/s/ Jack N. Gunter
JUDGE, Superior Court of Habersham County, Georgia

APPENDIX D

(Filed June 7, 1982)

IN THE SUPREME COURT OF GEORGIA

CASE NO. 38360

BURNES SIMS, et al.,
Appellants,

vs.

WILLIAM N. GRIFFIN, et al.,
Appellees.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that William N. Griffin, B & B Beverage Co., Classic City Beverages, Inc., Georgia Crown Distributing Co., Northeast Sales Distributing, Inc., Premium Distributing Co., Inc. and Georgia Beer Wholesalers Association, Inc. hereby appeal to the Supreme Court of the Untied States that Judgment, Order and Decision of the Supreme Court of Georgia entered April 21, 1982 in the above-styled case which Judgment, Order and Decision reversed the Superior Court of Habersham County, Georgia and upheld, *inter alia*, the validity of Ga. Laws 1980, pp. 2280 *et seq.* as not being violative of the Fourteenth Amendment to the United States Constitution.

This Appeal is being taken to the Supreme Court of the United States under 28 U.S.C. §1257(2).

This 4th day of June, 1982.

/s/ Herbert H. Gray, III
Herbert H. Gray, III

/s/ K. Morgan Varner, III
K. Morgan Varner, III
Attorneys for Appellees

OF COUNSEL:
Varner, Stephens, Wingfield,
McIntyre & Humphries
1000 Grant Building
Atlanta, Georgia 30303
404/522-2020

APPENDIX E

(Filed June 18, 1982)

IN THE SUPREME COURT OF THE
STATE OF GEORGIA

CASE NO. 38359

BURNES SIMS, et al
Appellants

vs.

TOWN OF BALDWIN, et al
Appellees

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that THE TOWN OF MT. AIRY, GEORGIA, and THE TOWN OF BALDWIN, GEORGIA, hereby appeal to the Supreme Court of the United States that Judgment, Order and Decision of the Supreme Court of Georgia entered April 21, 1982, in the above styled case which Judgment, Order and Decision reversed the Superior Court of Habersham County, Georgia, and upheld, *inter alia*, the validity of Ga. Laws 1980, pp. 2280 *et seq.* as not being violative of the Fourteenth Amendment to the United States Constitution.

This Appeal is being taken to the Supreme Court of the United States under 28 U.S.C. § 1257(2).

This 16th day of June, 1982.

/s/ Dennis T. Cathey
Dennis T. Cathey
Attorney for Appellee
Town of Mt. Airy, Georgia

/s/ Edward E. Strain, III
Edward E. Strain, III
Attorney for Appellee
Town of Baldwin, Georgia

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APPENDIX F

HABERSHAM COUNTY—TAXES FOR EDUCATIONAL PURPOSES.

Proposed Amendment to the Constitution.

No. 248 (House Resolution No. 754-1776).

A RESOLUTION

Proposing an amendment to the Constitution so as to authorize the Board of Education of Habersham County to direct the governing authority of Habersham County to impose throughout the entire county certain excise taxes on alcoholic beverages sold within Habersham County and to authorize said Board to receive funds derived from such taxes and expend same for educational purposes within the Habersham County school district; to provide for the submission of this amendment for ratification or rejection; and for other purposes.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Article IX, Section V, Paragraph II of the Constitution is hereby amended by adding at the end thereof the following:

"The Board of Education of Habersham County, upon the adoption of a resolution by said Board for such purpose, is hereby authorized to direct the governing authority of Habersham County to impose, on behalf of said Board of Education, any one or more of the following taxes:

(1) An excise tax not exceeding five cents per 12 ounces, or a proportionate tax at like rate on bottles, cans, and containers of various sizes, on the sale of malt beverages within Habersham County. Such tax may also be imposed on tap or draft beer sold within

Habersham County at a rate not exceeding $6.00 for each barrel or bulk container containing 15 1/2 gallons, or a proportionate tax at like rate for containers of various sizes.

(2) An excise tax not exceeding 25 cents per gallon, or a proportionate tax at like rate on fractional parts of a gallon, on the sale within Habersham County of wines, whether produced from fruits or berries grown within or without the state, having an alcoholic content of 14 percent or more by volume.

(3) An excise tax not exceeding 80 cents per gallon, or a proportionate tax at like rate on fractional parts of a gallon, on the sale within Habersham County of distilled spirits or spirituous liquors if the sale of such distilled spirits or spirituous liquors within Habersham County hereafter becomes legal in the manner provided by law.

If the Board of Education of Habersham County adopts a resolution directing that one or more of the taxes authorized above be imposed, it shall be the duty of the governing authority of Habersham County to impose and collect such tax beginning on the date specified in the resolution adopted by said Board of Education. Said resolution shall specify the rate, within the foregoing limitations, of any such tax. Said tax shall be imposed on behalf of the Board of Education, and the proceeds therefrom shall be paid to the Board of Education, in a manner and at such times as shall be specified by the resolution adopted by said Board of Education, to be used by said Board for educational purposes within the Habersham County school district. The Board of Education of Habersham County shall be authorized to receive and expend funds derived from any such tax for such educational purposes, notwithstanding any other provision of

this Constitution, and receiving such funds shall not modify, restrict, limit or supersede the authority of said Board of Education to cause the levy of ad valorem taxes for educational purposes as provided by law and this Constitution. The governing authority of Habersham County shall be authorized to deduct from the proceeds of any tax imposed hereunder a reasonable amount, not to exceed five percent of such proceeds, for administrative expenses incurred by the county in imposing and collecting any such tax on behalf of the Board of Education. Any tax authorized hereunder may be imposed and collected at either the wholesale or retail level, but such tax may not be imposed at both the wholesale and retail level on the same alcoholic beverages. Any tax authorized hereunder shall be imposed throughout the territorial limits of Habersham County, both within and without any incorporated areas in the county, and shall be in addition to any such tax heretofore or hereafter imposed or authorized to be imposed by the state or by counties and municipalities.

Any action taken by the Board of Education of Habersham County and the governing authority of said county to carry out and implement the powers hereinabove granted shall not be repealed, modified or superseded by any general or local law, whether presently existing or hereafter enacted. Such powers may be exercised by said Board of Education and county governing authority from time to time, and any tax imposed within Habersham County pursuant to such powers may be repealed, modified or superseded by subsequent action of said Board of Education and county governing authority."

Section 2. The above proposed amendment to the Constitution shall be published and submitted as provided in Article XII, Section I, Paragraph I of the Constitution.

The ballot submitting the above proposed amendment shall have written or printed thereon the following:

"[ ] YES Shall the Constitution be amended so as authorize the Board of Education of Habersham County to direct the governing authority of Habersham County to impose certain excise taxes on alcoholic beverages sold within all parts of Habersham County and to authorize said Board to receive funds derived from such taxes and expend same for educational purposes within the Habersham County school district?"

[ ] NO

All persons desiring to vote in favor of ratifying the proposed amendment shall vote "Yes." All persons desiring to vote against ratifying the proposed amendment shall vote "No."

If such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall become a part of the Constitution of this state.